IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

WP(C).No. 24882 of 2004(K)

PETITIONER:

G.ANILKUMAR, S/O.GOVINDA PILLAI,
AGED 45 YEARS, RESIDING AT KANDALA P.O.,
KATTAKKADA, THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE EXECUTIVE ENGINEER,**
   PUBLIC WORKS DEPARTMENT, ROADS DIVISION,
   THIRUVANANTHAPURAM, OFFICE OF THE EXECUTIVE
   ENGINEER, ROADS DIVISION,
   THIRUVANANTHAPURAM-33.

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 24882 OF 2004-K

JUDGMENT

The petitioner was a contractor, who responded to a tender notification issued for a civil work at a cost of Rs.15 lakhs in Thiruvananthapuram East Legislative Assembly Constituency. He was the only contractor who submitted the tender. He was selected and has been issued with selection notice dated 24.4.2004, to execute the agreement. Since he failed to appear in time for the execution of the agreement, he was reminded of the same by registered notice dated 4.6.2004. In the meantime, the petitioner made a request before the 2nd respondent Executive Engineer on 18.5.2004, to relieve him from the work and to release the Earnest Money Deposit, on medical grounds. But, the said request was rejected by the Executive Engineer, by Ext.P6 order dated 30.6.2004 and it was ordered to forfeit the EMD. So, this Writ Petition was filed, challenging Ext.P6. The petitioner submits, Ext.P6 has been passed without taking into account his request dated 18.5.2004. Therefore, the impugned order is vitiated.

2. I find that the Executive Engineer has mentioned about the petitioner's letter dated 18.5.2004, requesting to relieve him from the work.

But, after the tender is over, if a person withdraws from the tender, everything done in connection with the work will be a sheer waste. So, to ensure that only genuine contractors participate in the tender, the provision for EMD is made. If the contractor who is awarded the work, does not come forward to execute the agreement and do the work, I find nothing illegal, if the competent authority decides to forfeit the EMD. The fact that the petitioner was not keeping good health, is not a valid ground for not executing the agreement or undertaking the work. Therefore, I feel that the decision of the competent authority to forfeit the EMD cannot be said to be arbitrary or illegal. Accordingly, the Writ Petition fails and it is dismissed.

16th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/